

REMARKS

Claims 1-45, 47-56, 58-68 and 70-72 are now pending in the application. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the remarks contained herein.

Should the Examiner rely on a new ground of rejection or a new reference in rejecting the claims in the next Office Action, a Final Office Action would not be appropriate since no amendments have been made to the claims. See MPEP § 706.07(a) - under present practice, Office Actions where the Examiner introduces a new ground of rejection shall be final only when the new ground of rejection is necessitated by Applicant's amendment of the claims.

OATH/DECLARATION

Claims 1-45, 47-56, 58-68 and 70-72 are rejected as being based upon a defective reissue oath under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175. In particular, the Examiner alleges that the reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

Applicant has included herewith a supplemental reissue declaration to correct the "errors" statement. A reissue

declaration must contain a statement that the Applicant believes the original patent to be wholly or partly inoperative or invalid by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than patentee had the right to claim in the patent. (MPEP § 1414.I). Please note that Applicant's declaration states "I believe that the original above-identified U.S. patent is partially inoperative by reason of my having claimed less than I had the right to claim in that patent." As such, Applicant respectfully submits that this portion of the requirements for a reissue declaration is satisfied.

A reissue declaration must contain a statement of at least one error which is relied upon to support the reissue application. (MPEP § 1414.II.A). In identifying the error, "it is sufficient that the reissue oath/declaration identify a single word, phrase, or expression in the specification or in an original claim, and how it renders the original patent wholly or partly inoperative or valid." (MPEP § 1414.II.B). Please note that Applicant's declaration now notes that none of the independent claims of the original patent recite a biasing circuit as recited in new independent claims 45, 56, and 67, which recite a biasing circuit, biasing means, and providing a biasing voltage, respectively.

Applicant's declaration includes a supplemental oath that states that every error in the patent which was corrected in the present reissue application, and which is not covered by the prior oath(s) and/or declaration(s) submitted in this application, arose without any deceptive intention on the part of the applicant.

Further, Applicant respectfully submits that the reissue application was filed within the two-year period set in 35 U.S.C. § 251, fourth paragraph, for applications which seek to enlarge the scope of the claims. Applicant respectfully notes that 35 U.S.C. § 251 does not require that a proper reissue oath declaration is filed within the two-year period and instead only requires that the application is applied for (i.e. filed) within the two-year period, since the inclusion of the broadened claims filed within the two-year period serve as sufficient notice of an intent to broaden.

In other words, there is no requirement that a proper oath is filed within the two-year period, and the oath can be filed at a later time so long as the broadened claims were presented within the two-year period. In Re Bennett, 766 F.2d 524. A properly executed oath filed after the two-year period does not change the filing date of a reissue application applied for within the two-year period. More specifically, the requirement for the inventor's oath does not take away the filing date "with

respect to claims in a reissue application which are broader than issued claims." In Re Bennett, 766 F.2d at 529.

In view of the foregoing, Applicant respectfully submits that the reissue oath and declaration are proper.

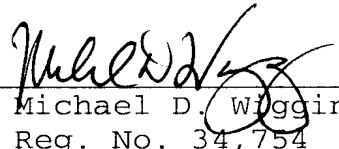
CONCLUSION

It is believed that all of the stated grounds of rejection have been properly addressed. For all of the reasons set forth above, Applicant submits that the application is in condition for allowance. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. By addressing particular positions taken by the Examiner in the above remarks, Applicant does not acquiesce to other positions that have not been explicitly addressed. In addition, Applicant's arguments for the patentability of a claim should not be understood as implying that no other reasons for the patentability of that claim exist.

If the Examiner believes that personal communication will allow any outstanding issues to be resolved, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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By: 
Michael D. Wiggins
Reg. No. 34,754
Damian M. Aquino
Reg. No. 54,964

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

MDW/DMA/rao

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